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June 29, 1992

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JUN 29 1992

Federal Communications Commission
Office of the Secretary

Via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Rulemaking Comments
PR Docket No. 92-80
RM-7909

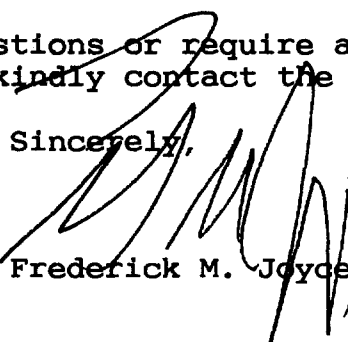
ORIGINAL
FILE

Dear Ms. Searcy:

Transmitted herewith, on behalf of RuralVision Central, Inc. and RuralVision South, Inc., please find enclosed the original and four (4) copies of its Comments in the above-referenced Rulemaking proceeding. Additional copies will be served on the Commissioners.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,


Frederick M. Joyce

FMJ/ld
enc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Amendment of Parts 1, 2, and
21 of the Commission's
Rules Governing Use of the
Frequencies in the 2.1 and 2.5
GHz Bands.

To: The Commission

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) PR Docket No. 92-80
) RM7909
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JUN 29 1992

Federal Communications Commission
Office of the Secretary

COMMENTS OF
RURALVISION SOUTH & RURALVISION CENTRAL

Frederick M. Joyce
Christine McLaughlin
Their Counsel

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Date: June 29, 1992

SUMMARY of COMMENTS

The Commission's goal of expediting the processing of MDS applications is laudable. RuralVision is concerned, however, that some of the Notice's proposals to expedite application processing may be achieved only at the expense of other, more overarching public interest considerations. In particular, the public's interest in robust competition for wireless cable services, and, the interest of fairness to parties who have previously complied with the Commission's rules, may be jeopardized by the Notice's proposals.

At a minimum, if the FCC does find substantial record evidence to conclude that another change in the MDS engineering rules would be in the public's interest, then the FCC should not apply those rule changes retroactively: to do so would be unfair and financially harmful to applicants that have complied with applicable FCC rules. Rather, the FCC should adopt a reasonable "grace period" during which applications that have already been engineered under the current rules could be filed and processed.

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JUN 29 1992

Federal Communications Commission
Office of the Secretary

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¹ Technical assistance for these Comments was provided by Bernard R. Segal, P.E., consultant to Jules Cohen & Associates, P.C.

construction and operation of multi-channel wireless cable systems. RuralVision will be bringing wireless cable television services to communities that have no cable service or where cable service is extremely limited. In short, RuralVision, one of the largest wireless cable entities in the Nation, is committed to the development of competitive wireless cable TV services.

The FCC's Notice proposes sweeping changes to the FCC's MDS rules and regulations. These rule changes will have a considerable impact on RuralVision's pending MDS applications, and its future wireless cable plans. Thus, RuralVision has standing as a party in interest in this proceeding.

II. Summary of Notice.

The Notice proposes several rule changes intended to help loosen the "large and aging backlog" of MDS applications now pending at the Commission. Notice at ¶ 5. To broadly summarize the Commission's proposed rule changes, they fall into one of two categories: (1) "infrastructure" changes, changes concerning which FCC office will continue to be responsible for processing MDS applications; Notice at ¶ 6; and, (2) "licensing standards," changes to the basic criteria for accepting and granting MDS applications; Notice at ¶ 12.

III. Summary of Comments.

The Commission's goal of expediting the processing of MDS applications is obviously laudable. RuralVision is concerned,

however, that some of the Notice's proposals to expedite application processing may be achieved only at the expense of other, more overarching public interest considerations. In particular, the public's interest in robust competition for wireless cable services, and, the interest of fairness to parties who have previously complied with the Commission's rules, may be jeopardized by the Notice's proposals. RuralVision will expand upon these concerns herein.

IV. Relocation of MDS Processing.

The Notice suggests four options for "relocating" the processing of MDS applications within the FCC. Notice at ¶ 6. The Commission suggests that each option may have certain advantages in regard to the objective of expediting the processing of MDS applications. Unfortunately, the Notice lacks the details necessary for members of the industry to determine if one Bureau is better suited than another to process MDS applications.

Public commenters have no greater insight concerning which FCC Bureau is more apt to process MDS applications expeditiously, than does the Commission itself. Rather than expressing a preference for a particular Bureau, RuralVision is more fundamentally concerned with the results of the "relocation" of MDS processing. If the relocation of MDS processing to any particular FCC office will result in quicker grants, with no attendant risk that applications will be "lost" in the move, then it would be hard to object to that relocation. On the other hand, if the Commission

chooses to leave MDS applications where they currently are processed, it is obvious that additional efforts must be made to expedite the ten-year backlog of pending applications.

It could be inferred from the Notice that the principal differences between the relative abilities of the Private Radio Bureau, Mass Media Bureau and Common Carrier Bureau to expeditiously process radio applications, concern the relative capabilities of their computer systems. See Statement of Commissioner Ervin S. Duggan at 2. If that is the case, then the FCC should squarely address that issue. The collective technical know-how of the wireless cable industry should be able to suggest practical ways in which the Commission could effectively utilize computers to process the backlog of MDS applications.

The Notice does not address the issue of how the wholesale relocation of 20,000 pending applications and untold numbers of amendments could be accomplished without some of these documents being "misplaced" in the move. That issue should be addressed before the industry is asked to endorse a relocation of their applications. Even if only a handful of applications are lost in the move, that would be of little comfort to the adversely affected party. In light of the history of MDS processing delays, it could be a long time before the affected party ever discovered that his application was lost. The agency time spent in responding to appeals from entities whose applications were lost may outweigh the gains achieved from processing these applications at another location.

Finally, RuralVision is fundamentally concerned with the quality of the review process, rather than the mere location of that review. Computers alone will not solve the processing backlog. Wherever the Commission chooses to locate MDS application processing, it should ensure in advance that it has sufficient personnel available who are familiar with the MDS rules, and who can make fair and reasoned decisions concerning these applications.

V. Licensing Standards.

Perhaps the most drastic rule change proposed in the Notice is the proposal to substitute fixed mileage separation criteria or "service areas" for existing interference protection criteria as the method by which MDS applications will be engineered and granted. Notice at ¶¶ 12, 26. In particular, the Commission has proposed that co-channel facilities be separated by at least 80 kilometers (approximately 50 miles) and that adjacent channel stations be separated by at least 48 kilometers (approximately 30 miles). In the alternative, applications would be granted for a particular geographic service area, akin to the cellular radio model. Id. The Commission submits that these proposals may be preferable to the existing interference criteria in that they "slow processing because Commission engineers are required to evaluate each applicant's submissions." Id. RuralVision opposes these proposals for a variety of reasons.

A. The Mileage Criteria Would Harm Competition.

The proposed mileage separation criteria essentially adopt a

"worst case" protection criteria standard. The proposed criteria do not take into consideration horizontal or vertical polarization, effective radiated power, topographic anomalies, or off-set operations, among other things. Thus, all the "real world" engineering criteria that have thus far enabled applicants to successfully build and operate wireless cable systems side-by-side with existing systems, would be eliminated by this agency proposal. As a consequence, the mileage separation standards will inevitably lead to a less competitive environment for wireless cable entrepreneurs. The proposed rule changes are thus contrary to recent FCC policies, and are spectrally inefficient.

If there is one consistent theme throughout the FCC's wireless cable orders and proceedings in the past few years, it is the agency's policy of providing the public with greater choice in video services: "increased access to entertainment and educational programming ..." has been the prevailing theme. See Wireless Cable Service (Order on Reconsideration, 69 RR2d 1477, 1485 (1991)). The Notice presents a dramatic and unnecessary departure from that theme, for the sake of expedience in processing applications. That is not a fair exchange.

To further its policy of promoting consumer choice, the FCC only recently endorsed the type of engineering solutions that the Notice would entirely abandon. For instance, in its Wireless Cable Order, 5 FCC Rcd. 6410, 6420 (1990), the FCC endorsed the use of offset frequency operations to "reduce co-channel interference" and "allow an increase in the number of stations in a geographic

area." Order on Reconsideration, 69 RR2d 1477, 1485. Some parties opposed that proposal because they did not want competing "newcomers" to be licensed on offset frequencies. The FCC's response was succinct: "To the extent their view seems to be that the public should not be provided increased access to entertainment and educational programming because it would result in competitors to existing stations, we do not agree." Id. Inexplicably, the Notice would eliminate the competitive gains that off-set operations have brought to the wireless industry.

If it were not for various engineering tools such as offset transmitters, and "real world" interference studies, many rural service area applications filed by RuralVision could not be granted. If the FCC's existing interference criteria are abandoned for mileage separation criteria, the adverse results will be predictable: less competition for video services, fewer licensees will "skim the cream," serving only the largest markets, services and prices will be subject to little or no effective competition. Thus, the proposed mileage separation criteria would effectively "turn back the clock" on the FCC's pro-competitive wireless cable policies. For its part, RuralVision has never shied from competition; it opposes these proposed rule changes because they are contrary to the FCC's pro-competitive policies.

B. The Time Savings may be Illusory.

The proposed mileage separation criteria have a certain surface appeal, namely, that these changes will expedite the processing of applications. Yet, the Notice does not contain

sufficient empirical evidence to prove that the hoped-for time savings will be realized. In fact, there is evidence that the choice of existing interference criteria versus mileage separation standards will not determine the speed with which an application is processed at the Commission.

For example, Part 22 of the Commission's rules contains a variety of radio services that are processed by either interference criteria (paging and conventional mobile) or fixed mileage separation criteria (cellular radiotelephone and 900 MHz paging). See 47 C.F.R. 22.1, et seq. The processing times for these services do not necessarily comport with the Notice's assumptions.

If cellular application processing is the guide, then the mileage separation criteria will not necessarily result in rapid application grants: the processing of Rural Service Area applications has taken several years to complete. On the other hand, the Mobile Services Division is capable of processing hundreds of conventional mobile and paging applications using co-channel and adjacent-channel interference criteria: average application processing can be as little as six to nine months' time.

In short, MDS processing delays may be caused by a variety of factors that warrant attention. Interference criteria alone, however, should not be singled out as the "scapegoat" for these processing delays absent empirical evidence to the contrary.

C. Financial Harm to Prior Applicants.

RuralVision, like many other industry participants, has spent

hundreds of thousands of dollars to engineer wireless cable systems and prepare applications that are consistent with the FCC's current MDS rules. Those rules have already undergone substantial revisions in recent years. Now, the FCC proposes to adopt changes that would render that work useless. To compound the problem, the Notice states that the proposed rule changes might apply retroactively to all pending applications. Notice at ¶ 12, n. 25. That action would cause an unmitigated financial disaster for RuralVision and similarly situated parties. Such rapid and unnecessary changes in agency policy could also frighten investors away from the wireless cable industry.

At a minimum, if the FCC does find substantial record evidence to conclude that another change in the engineering rules would be in the public's interest, then the FCC should not apply those rule changes retroactively: to do so would be unfair and financially harmful to applicants that have complied with applicable FCC rules. Rather, the FCC should adopt a reasonable "grace period" during which applications that have already been engineered under the current rules could be filed and processed.

D. Suggested Alternatives.

RuralVision recommends that the FCC consider alternative means to expedite the processing of MDS applications using existing interference criteria. These modifications would foster the twin-policy objectives of expediting the processing of MDS applications, while maintaining a robust, competitive playing field for video services.

The FCC has previously managed the processing of numerous low power television ("LPTV") and one-way signalling applications using specific engineering criteria. The FCC has computer programs in place to assist it in processing applications for these services. For instance, the LPTV and television translator rules account for terrain, antenna, power and height differences, yet, that "engineering review" process for these services is handled mainly by computer, in a reasonably timely manner.

To a similar extent, the procedure for determining whether one MDS application proposal is compatible with another could be managed by computer if an appropriate engineering program were implemented for MDS operations. If necessary, the FCC could solicit comments from the wireless cable industry's numerous engineers and technicians concerning the development of such a computer program.

CONCLUSION

No one could criticize the FCC's efforts to expedite the processing of MDS applications. The sheer number of applications that are in processing must be daunting to the agency. Nevertheless, in its zeal to break the application logjam, the FCC should not lose sight of some of the fundamental policies that gird the wireless cable industry.

As Commission Duggan has eloquently observed on numerous occasions, the wireless cable industry was born of competition. See Notice "Separate Statement of Commissioner Duggan." The rule

changes that the FCC contemplates in this rulemaking proceeding should aim to foster that competition, not destroy it. Thus, RuralVision respectfully suggests that the Commission take a harder look at its proposals, and dismiss those proposed rule changes that will effectively reduce competition in the wireless industry.

Respectfully submitted,

~~RURALVISION SOUTH, Inc.~~
~~RURALVISION CENTRAL, Inc.~~

By



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Their Attorneys

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June 29, 1992

CERTIFICATE OF SERVICE

I, Christine McLaughlin, Esq., do hereby certify that on this 29th day of June, 1992, copies of the foregoing Comments were mailed, postage prepaid, to the following:

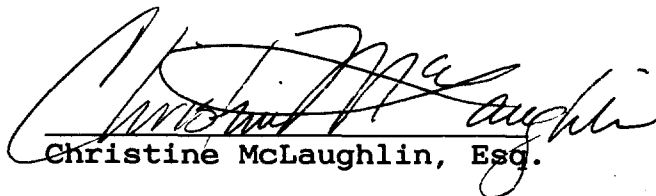
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